IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17769 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COOKVEL FOODS INDIA PRIVATE LIMITED

Versus

ASSTT. PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 17769 of 2003

MR AM PAREKH for Petitioner No. 1-2

MS AVANI S MEHTA for Petitioner No. 1-2

MR PJ MEHTA for Respondent No. 1

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 25/03/2004

ORAL JUDGEMENT

Rule. Mr.P.J.Mehta, learned Counsel for respondent No.1 waives service of rule.

With the consent of the parties the matter is taken up for final hearing today.

3. The present petition is preferred by the petitioners challenging the order dated 26-12-2002 passed by Respondent No.1 as well as the notice issued by Respondent No.3 dated 21-5-2003, whereby the Review Application filed under Section 7B of the Act has been rejected and the petitioners are called upon to deposit the amount as ordered in the first order passed under Section 7A dated 20-9-2002.

4. Heard Mrs.Mehta, learned Counsel for the petitioners and Mr.Mehta, learned Counsel for Respondent No.1.

5. The question arises in this petition is as to whether it is obligatory on the part of the Provident Fund Authority to give opportunity of hearing before taking decision in Review Application under Section 7B of the Act or not.

6. The learned Counsel for both the sides agree on the point that opportunity of hearing has not been given. However, Mehta appearing for the Provident Fund Authority today has placed on record the written submissions and in the said written submissions, at para 2 it has been mentioned that "no opportunity of hearing is necessary to be allowed to the competent Authority on the grounds of having not found any new material or submission of evidences, which may causes consideration of the review or sought for clarification which required presence of petitioner." Mr.Mehta also submitted that as such in absence of any new material, the opportunity of hearing is not required to be given and he submitted that the order passed under Section 7B is legal and valid. To examine as to whether the hearing would be required or not, it would be necessary to consider the provisions of Section 7B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). Section 7-B of the Act reads as under:

"7-B. REVIEW OF ORDERS PASSED UNDER SEC. 7-A.

(1) Any person aggrieved by an order made under sub-section (1) of Sec. 7-A, but from which no appeal had been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of

due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review to such order may apply for a review of that order, to the officer who passed the order:

PROVIDED that such officer may also on his own motion review his order is he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same:

PROVIDED that-

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order under review as if the order passed under review were the original order passed by him under Sec. 7-A."

7. The perusal of Section 7-B shows that if a new ground is discovered or new matter or evidence could not be produced to the notice of the authority, the review

application can be preferred. What would be the scope and ambit of review on the basis of new material or which can be said as new material etc. is not the subject matter of this petition, therefore, it would not be necessary to examine the scope and ambit of the power of review under Section 7-B of the Act on the aforesaid aspects, except the only aspect as to whether the opportunity of hearing is required or not. Sub. Sec. (3) of Section 7-B provides that where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application and, therefore, the contention possibly based on the said SubSection is that there is no express provision made for giving opportunity of hearing. It is well settled that whenever the powers are to be exercised for quasi-judicial purpose or whenever the authority is acting as a quasi-judicial authority, the hearing is a must, because passing of any order is to visit with civil consequences. Such principles are in certain matters read even for administrative decision. In the present case, if the scheme of the Act, more particularly Sections 7-A and 7-B are considered, firstly the powers under Section 7-A with the Provident Fund Authority are as quasi judicial authority. Expressed powers are provided as per Section 7-B for review on the ground mentioned in review. Even otherwise also, it is well settled that even if the statute does not provide for opportunity of hearing unless it is expressly excluded or unless there are any emergent circumstances warranting for such purpose, the section or any power under statute as that of quasi judicial authority are to be read with the principles of natural justice and such scheme of giving opportunity of hearing by observance of principles of natural justice is to be read as in-built mechanism of any decision-making process by a quasi judicial authority. Therefore, the contention of Mr.Mehta that hearing is required only if new material to the satisfaction of the authority is found for exercise of the power of review cannot be accepted. Whether such material is new material or whether such contention is required to be considered for attracting the power of review or not would also require that the person concerned who has preferred the review application is heard. The authority before concluding the proceedings of the review application must give an opportunity of hearing to the party concerned. Mr.Mehta made an attempt to submit that in provisio to Sub-section (4) of Section 7B hearing is provided as per Clause (a) and, therefore, power under Section 7B(3) may not be read with principles of natural justice. As such Clause (a) of provisio to Sub-section (4) of Section 7B does make it mandatory to

authority to give hearing if the application is to be allowed but thereby it cannot be read that no hearing is necessary if application is to be rejected. Since in the present case, as observed earlier, it is an admitted position that no opportunity of hearing has been given, the order passed in review application dated 26-12-2002 cannot be sustained in the eye of law and deserves to be quashed and set aside on the ground that opportunity of hearing has not been given.

8. Mr.Mehta for the Provident Fund Commissioner voiced the grievance that as per the first order dated dated 20th September, 2002 passed by the Assistant Provident Fund Commissioner the petitioner company had to make the payment of Rs.27,85,098/= and out of the same only Rs.2 lac has been deposited. As per the interim order passed by this Court (Coram: Ravi R. Tripathi, J.) on 22-12-2003 and, therefore, he submitted that the petitioner should be directed to deposit more amount even pending the reconsideration of the review, in case the Court finds that the hearing is required to be given and the matter is required to be reconsidered upon the review application.

Ms.Mehta, learned Counsel for the petitioner, submitted that the petitioner is earth-quake affected unit and the Provident Fund Authority has already freezed the bank account.

9. Be as it may, I find that neither it would be necessary for this Court to direct the petitioner to deposit more amount, nor is it necessary to prohibit the authority from recovering the amount in accordance with law and the said aspect is left to the discretion of the authority, but certainly the authority cannot decline the reconsideration of the review on the ground that the amount is not deposited.

10. In view of the aforesaid, the order dated 26-12-2002 passed in Review Application preferred by the petitioner is quashed and set aside with the further directions that the Review Application preferred by the petitioner dated 18-10-2002 shall stand restored and the Assistant Provident Fund Commissioner, Rajkot shall give opportunity of hearing to the petitioner and decide the same in accordance with law, as early as possible, preferably within a period of two months from the date of receipt of the order of this Court.

11. Rule. made absolute to the aforesaid extent. Considering the facts and circumstances, no cost.

25-3-2004 (Jayant Patel, J.)

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